

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

In re:

Chapter 7

BARBARA ZEIFER,

Case No. 13-12228 (MG)

Debtor.

-----X

**STIPULATION AND AGREED ORDER AMONG THE CHAPTER 7 TRUSTEE,
NEWTEK SMALL BUSINESS FINANCE, INC., AND NEWTEK BUSINESS CREDIT,
D/B/A CDS BUSINESS SERVICES, INC.
MODIFYING THE AUTOMATIC STAY**

Newtek Small Business Finance, Inc., Newtek Business Credit, d/b/a CDS Business Services, Inc., and the Chapter 7 Trustee of the above-captioned debtor's (the "Debtor") bankruptcy estate, hereby stipulate and agree, as follows:

Background¹

A. On August 15, 2008, CLBAZ Connections, LLC issued a promissory note to Newtek Small Business Finance, Inc. ("NSBFI") in the amount of \$473,000. The note carried interest at a variable rate of Wall Street Journal prime plus 2.75% and contained a provision for attorney's fees. The note was guaranteed by Christopher Luis ("Luis") and the Debtor.

B. On August 17, 2009, CLBAZ entered into a factoring agreement with Newtek Business Credit, d/b/a CDS Business Services, Inc. ("NBC," and along with NSBFI, collectively, "Newtek"), which was also guaranteed by Luis and the Debtor.

C. On February 17, 2010, CLBAZ Connections, Inc. issued a promissory note to NSBFI in the amount of \$100,000, which was also guaranteed by the Debtor.

¹. The Trustee stipulates to these facts based on preliminary information available to him for purposes of this Stipulation only, and without prejudice to any rights or claims of the Trustee in connection with Newtek's, or any other parties', claims in this case.

D. An action (the “Action”) was commenced by Newtek against the Debtor and Luis on June 14, 2012 in New York Supreme Court, Nassau County, under Index No. 601105/12. By Order dated March 20, 2013, the Court granted NSBFI summary judgment to the extent of liability on the Debtor’s and Luis’s guarantees of the aforementioned promissory notes. Summary judgment to NBC with respect to the guarantees of the aforementioned factoring agreement was denied on the ground that the factoring agreement was not an instrument for the payment of money only.

E. The Debtor filed a voluntary bankruptcy petition on July 5, 2013. By virtue of this filing, the Action was stayed pursuant to Section 362 (a) of the Bankruptcy Code. This bankruptcy case was converted, on Debtor’s consent, to one under Chapter 7 on March 3, 2014. Yann Geron, Esq. was appointed as the Chapter 7 Trustee of the Debtor’s estate on March 5, 2014.

F. Newtek now wishes to sever the Action so as to enable Newtek to pursue its remedies against Luis only, while the Action as to the Debtor will remain stayed by virtue of the Automatic Stay.

IT IS THEREFORE HEREBY STIPULATED AND AGREED by and among the the Chapter 7 Trustee, and Newtek, as follows:

1. The Automatic Stay pursuant to Section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to enable Newtek to sever the Action and continue it against Luis only, so that it may obtain and enforce a judgment against him.

2. It is expressly understood that the automatic stay is not otherwise modified in any other manner as to the Debtor, and Newtek shall not otherwise pursue the Action against the Debtor absent further Order of this Court or unless her bankruptcy case is dismissed.

3. This Stipulation and Agreed Order may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

4. This Stipulation and Agreed Order constitutes the entire agreement and understanding of the parties regarding the Stipulation and Agreed Order and the subject matter thereof.

5. Each of the undersigned counsel represents that he or she is authorized to execute this Stipulation and Agreed Order on behalf of his respective client.

Dated: April 30, 2014

RIVKIN RADLER LLP

Attorneys for Newtek Small Business Finance, Inc. and
CDS Business Services, Inc. D/B/A Newtek Business Credit

By: /s/ Matthew V. Spero
Stuart I. Gordon, Esq.
Matthew V. Spero, Esq.
926 RXR Plaza
Uniondale, New York 11556-0926
(516) 357-3000
stuart.gordon@rivkin.com
matthew.spero@rivkin.com

FOX ROTHSCHILD LLP

Attorneys for the Chapter 7 Trustee, Yann Geron

By: /s/ Yann Geron
Yann Geron, Esq.
100 Park Avenue
Suite 1500
New York, New York 10017
Tele. (212) 878-7901
ygeron@foxrothschild.com